



COMMONWEALTH OF KENTUCKY
JUDICIAL ETHICS COMMITTEE
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JUDICIAL ETHICS OPINION JE-7

Formal

- Question:** May a judge who owns real estate rent offices therein to lawyers? Should special arrangements, such as a blind trust, be made in order to avoid the appearance of impropriety?
- Answer:** A judge may rent real estate to lawyers. Under ordinary circumstances, no special arrangements need be made.
- References:** SCR 4.300, Canon 3C(1)(c), Canon 5C(2).
- Opinion:** (July 1980):

Canon 5C(2) specifically allows judges to hold and manage investments, including real estate. Although Canon 5C(1) requires him to "refrain from financial and business dealings that . . . involve him in frequent transactions with lawyers . . .," we think that periodic payment of rent is not within that prohibition because of its routine nature. The typical landlord-tenant relation is not one which requires the parties to enter into frequent negotiations and financial adjustments.

Although a blind trust would solve any problems of apparent impropriety, the Committee takes the position that such an arrangement is precluded by Canon 3C(2), which requires a judge to "inform himself about his personal and financial interests . . ." As stated in Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Association 1973) at 64:

One important result of requiring a judge to know about his financial interests is to preclude the use of a so-called "blind trust" by a judge as a means of protecting himself from disqualification or from the necessity of investing in a manner to minimize the likelihood of his disqualification. The Committee rejected the blind trust concept for several reasons:

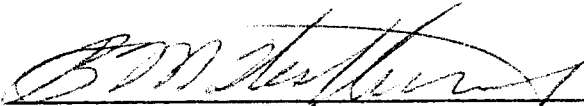
1. The complexity and cost of the blind trust would make it unavailable to most judges.
2. There was doubt as to how blind the blind trust would be. The judge, for example, may be required to sign an income tax return that reports investment income and capital gains and losses. There are many other ways in which the blindfold may be removed.

3. Most important was the doubt that the public and litigants would believe that the trust was blind if after a decision the fact was disclosed that the judge had had a substantial blind trust interest in the winning party in a proceeding before him.

It is true that Canon 3C(1)(c) requires a judge to disqualify himself when he has an "interest that could be substantially affected by the outcome of the proceeding;" but when rent payments are made on time and relations between landlord and tenant are not strained, the judge's interest as a landlord cannot be said to be "substantially affected" by the outcome of a particular proceeding. Therefore there would seem to be no need for disqualification of the judge solely because of the existence of the landlord-tenant relationship between judge and attorney. Should the lawyer fall behind in his rent, or should disagreements arise between them, the judge should then, of course, disqualify himself.

Every effort should be made to deal at arm's length in renting to lawyers. For instance, it might be desirable to negotiate the lease through another person, such as a real estate agent, in order to avoid any suggestion of impropriety. Also, the premises should not be rented for less than their fair market value. Finally, the name of the judge as owner of the building should not be given public prominence lest — in the words of Canon 2 — it might appear that he is lending "the prestige of his office to advance the private interests of others," or that he is conveying or allowing others to convey "the impression that they are in a special position to influence him." As stated in Thode, supra, at 49,

The judicial office should not be prostituted in this manner. A judge is also required, when he has knowledge of the conduct, to take action to stop an "influence peddler" — the lawyer or other person who tries to capitalize on the claim that he has special influence with the judge. Such a claim, unchecked, discredits not only the judge but also the entire judiciary.


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Ethics Committee of the Kentucky Judiciary